MT LEGISLATIVE HISTORY

Chapter 268 1981

Bill (H) 662 S _____ Original bill & hist. ✓ C

H. Committee on Select Committee on Water

Hearing Date(s) Feb 19 ✓ C

_____ ___ C

_____ ___ C

_____ ___ C

Date Out Feb 19 ✓ C

S. Committee on Agriculture

Hearing Date(s) Mar 13 ✓ C

_____ ___ C

_____ ___ C

_____ ___ C

Mar 13 ✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

TRANSMITTED TO SENATE: 4/16
REFERRED TO COMMITTEE ON FINANCE AND CLAIMS: 4/17
HEARING: 4/21
REPORT: 4/22, BE CONCURRED IN
2ND READING: 4/23, AS AMENDED--YEAS: 30; NAYS: 17
3RD READING: 4/23, YEAS: 34; NAYS: 16

RETURNED TO HOUSE WITH AMENDMENTS: 4/23
2ND READING: 4/23, YEAS: 52; NAYS: 34
ON MOTION, 4/23, RULES SUSPENDED, PLACED ON 3RD READING
3RD READING: 4/23, YEAS: 60; NAYS: 26

TRANSMITTED TO GOVERNOR: 4/23
ACTION: SIGNED, 5/1

HB 667--ROTH, GALT, IVERSON, ET AL--GENERALLY REVISING AND CLARIFYING THE ADJUDICATION OF WATER RIGHTS PROVISIONS.....
FISCAL NOTE: REQUIRED
INTRODUCED: 2/6
REFERRED TO SELECT COMMITTEE ON WATER: 2/6
HEARING: 2/19
REPORT: DO PASS, 2/20
2ND READING: 2/21 YEAS: 86; NAYS: 1
3RD READING: 2/24 YEAS: 98; NAYS: 1

TRANSMITTED TO SENATE: 2/24
REFERRED TO COMMITTEE ON AGRICULTURE: 3/2
HEARING: 3/13
REPORT: 3/18, BE CONCURRED IN
2ND READING: 3/20, BE CONCURRED IN
3RD READING: 3/23, YEAS: 47; NAYS: 1

RETURNED TO HOUSE: 3/23
TRANSMITTED TO GOVERNOR: 3/30
ACTION: SIGNED, 4/3
CHAPTER 268

HB 668--CURTISS, CONROY, KANDUCH, ET AL--TO AWARD COURT COSTS, ATTORNEY'S FEES, AND COSTS OF CONSTRUCTION DELAYS TO DEFENDANTS IN LAW SUITS THAT DELAY CONSTRUCTION OF ENERGY PROJECTS....
INTRODUCED: 2/6
REFERRED TO COMMITTEE ON JUDICIARY: 2/6
HEARING: 2/12
REPORT: DO NOT PASS, 2/16
SUBSTITUTE MOTION, 2/17, THAT THE BILL BE MOVED BACK TO COMMITTEE ON JUDICIARY. MOTION CARRIED.
REPORT: DO PASS AS AMENDED, 2/22
2ND READING: 2/24 YEAS: 19; NAYS: 78
DO NOT PASS MOTION, 2/24 YEAS: 81; NAYS: 15
BILL KILLED ON 2ND READING: 2/24

HB 669--ANDREASON, E. SMITH, ELLISON, ET AL--TO REQUIRE THAT THE OPENING DAY FOR ANY GAME ANIMAL HUNTING SEASON BE ON A SATURDAY CHOSEN BY THE FISH AND GAME COMMISSION....
INTRODUCED: 2/6
REFERRED TO COMMITTEE ON FISH & GAME: 2/6
HEARING: 2/12
REPORT: DO PASS AS AMENDED, 2/17
2ND READING: 2/21 YEAS: 42; NAYS: 51
DO NOT PASS MOTION, 2/21 YEAS: 58; NAYS: 37

HOUSE BILL NO. 667

INTRODUCED BY ROTH, GALT, IVERSON, HURWITZ, KENNIS, MOORE, CURTISS, CONROY, BRIGGS, SCHULTZ, ERNST, ELLERD, ELLISON, McLANE

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

IN THE HOUSE

February 6, 1981	Introduced and referred to Committee on Water.
February 10, 1981	Fiscal note requested.
February 12, 1981	Fiscal note returned.
February 20, 1981	Committee recommend bill do pass. Report adopted.
February 21, 1981	Bill printed and placed on members' desks.
	Second reading, do pass.
February 23, 1981	Considered correctly engrossed.
February 24, 1981	Third reading, passed. Ayes, 98; Noes, 1. Transmitted to Senate.

IN THE SENATE

March 2, 1981	Introduced and referred to Committee on Agriculture, Livestock, and Irrigation.
March 18, 1981	Committee recommend bill be concurred in. Report adopted.
March 20, 1981	Second reading, concurred in.
March 23, 1981	Third reading, concurred in. Ayes, 47; Noes, 1.

IN THE HOUSE

March 24, 1981 — Returned from Senate. Concurred in. Sent to enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 667

INTRODUCED BY Roth Galt Ryan Kennis Curtiss Conroy BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION McLane Briggs Schultz Ernst Ellerd Elliott

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE ADJUDICATION OF WATER RIGHTS PROVISIONS OF TITLE 3, CHAPTER 7, PART 3, AND TITLE 85, CHAPTER 2, PART 2, MCA; ALLOWING FOR THE APPOINTMENT OF MORE THAN ONE WATER MASTER IN EACH WATER DIVISION; PROVIDING FOR SUPERVISION AND ADMINISTRATION BY THE SUPREME COURT; PROVIDING A FILING FEE FOR THE FILING OF EXEMPT CLAIMS; PROVIDING THAT A PRELIMINARY DECREE MAY BE ISSUED FOR ANY INTERRELATED PORTION OF A WATER DIVISION; PROVIDING THAT A PRELIMINARY DECREE MAY BE ISSUED PENDING THE NEGOTIATION OF A COMPACT; ALLOWING A WATER JUDGE TO EXTEND THE TIME LIMIT FOR REQUESTING A HEARING ON A PRELIMINARY DECREE; PROVIDING FOR THE SUSPENSION OF LEGAL PROCEEDINGS, AND THE FILING OF FEDERAL CLAIMS UPON TERMINATION OF SUSPENSION; AMENDING SECTIONS 3-7-301, 85-2-112, 85-2-217, 85-2-225, 85-2-231, 85-2-233, 85-2-702, AND 85-2-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Supervision and administration by supreme court. (1) The Montana supreme court shall supervise the activities of the water judges, water masters, and associated personnel in implementing this chapter and Title 85, chapter 2, part 2.

(2) The supreme court shall pay the expenses of the water judges and the salaries and expenses of the water judges' staffs and the salaries and expenses of the water masters and the water masters' staffs, from the water rights adjudication account established by 85-2-241. "Salaries and expenses" as used in this section include but are not limited to the salaries and expenses of personnel, the cost of office equipment and office space, and such other necessary expenses as may be incurred in the administration of this chapter and Title 85, chapter 2, part 2.

Section 2. Section 3-7-301, MCA, is amended to read:

"3-7-301. Appointment of water masters -- removal. (1) The water judge in each water division shall appoint ~~a~~ at least one water master and may appoint more than one water master.

(2) A water master may be appointed after July 1, 1980, and must be appointed on or before July 1, 1982.

(3) In appointing a water master, the water judge shall consider a potential master's experience with water law, water use, and water rights.

(4) A water master shall serve at the pleasure of the

INTRODUCED BILL
HB 667

water judge and may be removed by the water judge."

Section 3. Section 85-2-112, MCA, is amended to read:

"85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted by the board under 85-2-113, subject to the powers and duties of the supreme court under [section 1];

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, declarations, claims of existing rights, and proceedings under this chapter and prescribe the information to be contained in any application, declaration, claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, declarations, claims of existing rights, applications, and other documents filed in its office under this chapter;

(4) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing declarations with the department or claims of existing rights with a district court under

this chapter."

Section 4. Section 85-2-217, MCA, is amended to read:

"85-2-217. Suspension of adjudication. ~~From the time of filing the petition required in 85-2-211 until July 1, 1982, and while~~ While negotiations for the conclusion of a compact under part 7 are being pursued, all ~~actions~~ proceedings to generally adjudicate reserved Indian water rights ~~from a source of water in question under this part~~ and federal reserved water rights of those tribes and federal agencies which are negotiating are suspended, ~~unless an action is commenced or is pending by or on behalf of an Indian tribe to adjudicate water from that source other than as provided for in Title 85, chapter 2. In such cases, the suspension is maintained only if the action is dismissed or if the parties to the action stipulate to the suspension during compact negotiations of all further proceedings in the action except the determination of jurisdictional issues and an order is so issued.~~ The obligation to file water rights claims for those reserved rights is also suspended. This suspension shall be effective until July 1, 1985, as long as negotiations are continuing or ratification of a completed compact is being sought. If approval by the state legislature and tribes or federal agencies has not been accomplished by July 1, 1985, the suspension shall terminate on that date. Upon termination of the suspension of this

part. the tribes and the federal agencies shall be subject to the special filing requirements of 85-2-702(3) and all other requirements of the state water adjudication system provided for in Title 85, chapter 2. Those tribes and federal agencies that choose not to negotiate their reserved water rights shall be subject to the full operation of the state adjudication system and may not benefit from the suspension provisions of this section."

Section 5. Section 85-2-225, MCA, is amended to read:

"85-2-225. Filing fee. (1) Each claim filed under 85-2-221 or 85-2-222 ~~shall~~ must be accompanied by a filing fee in the amount of $40, subject to the following exceptions:

~~(1)~~(a) the total filing fees for all claims filed by one person in any one water court division may not exceed $480; and

~~(2)~~(b) no filing fee is required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and which is accompanied by a certified copy of that decree or pertinent portion thereof or verified as otherwise ordered by the court.

(2) a claim that is exempt from the filing requirements of 85-2-221(1) but that is voluntarily filed must be accompanied by a filing fee in the amount of $40. Exempt claims for a single development with several uses if

filed simultaneously may be accompanied by a filing fee in the amount of $40."

Section 6. Section 85-2-231, MCA, is amended to read:

"85-2-231. Preliminary decree. (1) ~~Within a reasonable time after the close of the filing period, the~~ The water judge shall issue a preliminary decree. The preliminary decree shall be based on:

(a) the statements of claim before the water judge;

(b) the data submitted by the department;

(c) the contents of compacts approved by the Montana legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

(d) any additional data obtained by the water judge. The preliminary decree shall be issued within 90 days after the close of the special filing period set out in 85-2-702(3) or as soon thereafter as is reasonably feasible. This section does not prevent the water judge from issuing an interlocutory decree or other temporary decree if such a decree is necessary for the orderly administration of water rights prior to the issuance of a preliminary decree.

(2) A preliminary decree may be issued for any hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, at

a time different from the issuance of other preliminary decrees or portions of the same decree.

~~(2)~~(3) The preliminary decree shall contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234. The water judge shall include in the preliminary decree the contents of a compact negotiated under the provisions of part 7 that has been ~~agreed--upon-by-the-parties-to-the compact~~ approved by the legislature and the tribe or federal agency whether or not it has been ratified by congress.

~~(3)~~(4) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree set forth in subsections (1) and ~~(2)~~(3), ~~and~~ is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not so satisfied, he may, at his option, recommit the report to the master with instructions, or modify the report and issue the preliminary decree."

Section 7. Section 85-2-233, MCA, is amended to read:

"85-2-233. Hearing on preliminary decree. (1) Upon objection to the preliminary decree by the department, a person named in the preliminary decree, or any other person, for good cause shown, the department or such person is entitled to a hearing thereon before the water judge.

(2) If a hearing is requested, such request must be filed with the water judge within 90 days after notice of entry of the preliminary decree. The water judge may, for good cause shown, extend this time limit an additional ~~30~~ 90 days if application for the extension is made within 90 days after notice of entry of the preliminary decree.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions in the preliminary decree with which the department or person requesting the hearing disagrees. The request shall specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based.

(4) Upon expiration of the time for filing objections and upon timely receipt of a request for a hearing, the water judge shall notify each party named in the preliminary decree that a hearing has been requested. The water judge shall fix a day when all parties who wish to participate in future proceedings must appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing shall be conducted as for other civil actions. At the order of the water judge a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in M.R.Civ.P., Rule 53(e)."

Section 8. Section 85-2-702, MCA, is amended to read:

"85-2-702. Negotiation with Indian tribes. (1) The reserved water rights compact commission, created by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under 85-2-701. Compact proceedings shall be commenced by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written request for the initiation of negotiations under this part and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Upon receipt of such written designation from the governing body of a tribe, compact negotiations shall be considered to have commenced.

(2) When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The compact is effective and binding upon all parties upon ratification by the legislature of Montana, any affected tribal governing body, and the congress of the United States.

(3) Upon its approval by the Montana legislature and the tribe or federal agency, the terms of a compact must be

included in the preliminary decree as provided by 85-2-231. However, if approval of the state legislature and tribe or federal agency has not been accomplished by July 1, 1985, all federal and Indian claims for reserved water rights that have not been resolved by a compact must be filed with the department within 60 days. These new filings shall be used in the formulation of the preliminary decree and shall be given treatment similar to that given to all other filings."

Section 9. Section 85-2-704, MCA, is amended to read:

"85-2-704. Termination of negotiations. The commission or any other party to the negotiations may terminate negotiations by providing notice to all parties 30 days in advance of the termination date. On the termination date, the suspension of the application of part 2 provided for in 85-2-217 shall also terminate. The tribe or federal agency shall file all of its claims for reserved rights within 60 days of the termination of negotiations."

Section 10. Codification instruction. Section 1 is intended to be codified as an integral part of Title 3, chapter 7, part 2, and the provisions of section 1 apply to Title 3, chapter 7.

Section 11. Effective date. This act is effective on passage and approval.

-End-

HB 617

STATE OF MONTANA

REQUEST NO. 346-81

FISCAL NOTE

Form BD-15

In compliance with a written request received February 10, 19 81, there is hereby submitted a Fiscal Note for House Bill 667 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

Description of Proposed Legislation

HOuse Bill 667 is an act generally revising and clarifying the adjudication of water rights provisions of Title 3, Chapter 7, Part 3, and Title 35, Chapter 2, Part 2, MCA; allowing for the appointment of more than one water master in each water division; providing for supervision and administration by the Supreme Court; providing a filing fee for the filing of exempt claims; providing that a preliminary decree may be issued pending the negotiation of a compact; allowing a water judge to extend the time limit for requesting a hearing on a preliminary decree; providing for the suspension of legal proceedings, and the filing of federal claims upon termination of suspension; and providing an immediate effective date.

Fiscal Impact

Proposed Law	FY 1982	FY 1983
Personal Services	$156,043	$258,362
Operating Expenses	70,500	74,400
Capital Outlay	51,000	17,000
Expenditure Increase to Supreme Court	$277,543	$349,762
Expenditure Decrease to Department of Natural Resources & Conservation	$277,543	$349,762

Comment

The fiscal impact indicated above is that portion of the expenditures that would be the responsibility of the Supreme Court under the section proposing for the supervision and administration of the water courts by the Supreme Court. The expenditures are transferred from the Department of Natural Resources and Conservation to the Supreme Court. This fiscal impact was included on the Fiscal Note for Senate Bill 347, which is an act to create the Office of Chief Water Judge.

David M Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-12-81

STATUS SHEET

WATER COMMITTEE

1981 Legislature

Bill No.	Subject matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 667	Revising and clarifying the adjudication of water rights re: water master, filing fee, prelim. decree, time limit extension etc.	2-6	Roth	2/19/81	DO PASS	2/20
HB 670	To ensure effective utilization of potential of the agricultural lands in Montana by reserving limited amounts of ground water.	2/6	Curtiss	2/19/81	TABLED	2/19
SB 176	For an exception to permit requirements whenever appropriation of groundwater is by means of a well or dev. spring with a max appro. of less than 100 gal per min. etc.	2/7	Stimatz	3-10-81 ~~2/17/81~~	AS AMENDED BE CONCURRED IN	3/24
SB 285	To prohibit the board of Nat. Resources and Cons. from granting a min. flow reservation a preference over or priority date earlier than an ag. reserv. cons. concurr.	2/10	Story	3/5/81	BE NOT CONCURRED IN	3/26
SB 347	To create the office of chief water judge; to provide for the appointment, responsibilities, jurisdiction, and admin. requiremnts.	2/18	Galt	3/10	transferred to Appropriations Committee AS AMENDED BE CONCURRED IN	3/23
SB 297	To define "surface water and to amend the definition of "groundwater" amending Sections 85-2-102 and 85-2-501, MCA.	2/19	Turnage	3/12	BE NOT CONCURRED IN	3/20/81

Form CS-32
1-79

MINUTES OF THE SELECT COMMITTEE ON WATER
February 19, 1981

The Select Committee on Water convened at 1:00 p.m. on February 19, 1981 in Room 436 of the Capitol with Chairman AUDREY ROTH presiding. All members were present.

HB 670.
The hearing on HB 670 was opened by REP. CURTISS, the purpose of the bill being to ensure effective utilization of the potential of the agricultural lands in Montana by reserving limited amounts of ground water necessary for their continued development. She said that millions of dollars are being spent in other states to protect water rights, and she felt that Montana should do the same.

PROPONENTS:
BILL ASHER, representing the Agricultural Preservation Association, the Park County Legislative Association, Sweetgrass County Preservation Association, Stillwater County Agricultural Legislative Association (EXHIBIT I) went on record as supporting this bill.

RAY BECK, representing the Montana Association of Conservation Districts, said that his group supports the concept contained in the bill. (EXHIBIT II)

OPPONENTS:
GARY FRITZ, of the DNRC, presented written testimony in opposition of the bill (EXHIBIT III).

WILLA HALL, representing the League of Women Voters, appeared in opposition of the bill. (EXHIBIT IV)

REP. CURTISS closed the hearing on the bill.

QUESTIONS FROM THE COMMITTEE:
REP. KEMMIS asked for the intent of the bill. REP. CURTISS said that it is to make sure that there will be enough water for agricultural purposes. REP. Kemmis said he saw no reference to agricultural uses. He wondered if industry wouldn't also be able to get water by this bill. REP. CURTISS said yes, as long as agriculture has enough and so that no aquifer would be depleted.

REP. KEMMIS asked if the permit would have to be for use on a particular piece of land or if it would be transferrable. REP. CURTISS thought it would be restricted for use on a particular piece of land. MR. FRITZ agreed.

REP. HUNNEKENS asked for the DNRC's opinion about sections 1 and 2. GARY FRITZ said the bill would give the DNRC authority to apply for and reserve water, and it (DNRC) has done so in the past. The bill sets the DNRC up as a middle man.

It doesn't set up a permit, he said, but a way to gain a priority date.

REP. ASAY said that "first in time, first in line" seems to be contradicted in this bill.

REP. HUENNEKENS asked if a person wants to drill a well, does he have to apply for a permit or just use the water. MR. FRITZ said he would have to have a permit and would be classified as a junior user.

REP. CUTRISS closed the hearing on HB 670.

Amendments (EXHIBIT V)

HB 667.
CHAIRMAN ROTH opened the hearing on HB 667, a bill to clarify water rights of the adjudication progarm passed in 1979. She presented possible amendments to the committee and said they had been approved by JUDGE W.W. LESSLEY.

PROPONENTS:
GARY FRITZ, DNRC, said the bill would make five changes. He presented written testimony (EXHIBIT VI).

HENRY LOBLE submitted for the committee's information a copy of a bill entitled "AN ACT TO APPROPRIATE FUNDS TO THE DEPTMENT OF NATURAL RESOURCES AND CONSERVATION FROM THE WATER RIGHT ADJUDICATION ACCOUNT OF THE EARMARKED REVENUE FUND FOR THE OPERATION OF THE RESERVED WATER RIGHTS COMPACT COMMISSION." (EXHIBIT VII). He said there are negotiations with the indian tribes to resolve the questionable water rights. He said the bill is to form an inducement for the indian tribes to negotiate for water rights. They have been exempted from reserving at present. He felt it would be better to establish a deadline of July 1, 1985 to complete these negotiations. He said that, in several states, the problem is being worked on by litigations costing up to $6 million. He said that Wyoming is currently spending $100,000 per month in attorneys' fees. He said that the Ute Indians have concurred a compact with the state of Utah, but that it has not yet been ratified.

GORDON McGOWN said this bill will put Montana on the way to starting a water plan (EXHIBIT VIII).

JOHN SCULLY said he favors the bill and felt the amendments are necessary with regard to the Compact Commission. (EXHIBIT IX).

PAT OSBORN, Northern Plains Resource Council, said that good records are needed and that this bill will help to accomplish that. (EXHIBIT X).

OPPONENTS:
ROD SYGUSA, representing the Inter-Tribal Policy Board, said that tribes have traditionally balked at water rights or water obtained through treaties. Some absolutely refuse, he said. He said a "soft" opposition was voiced by him and told the committee that tribes work slowly and reluctantly. (EXHIBIT XI).

QUESTIONS FROM THE COMMITTEE:
REP. KEMMIS asked about the provision of appointing more than one water master. On page 2 is stated "at least one", he said. Also, he asked if the appointing should be more flexible and not by July 1982, in the case of more than one water master. MR. FRITZ said that the intention is that only one water master be appointed per district in this biennium, but more may be appointed later.

REP. KEMMIS said that on page 10, lines 15 to 17 the tribes are limited to 60 days to file a claim. DAVE LADD, attorney for the Compact Commission, said this is to prevent a tribe from going into a delaying tactic.

REP. ROTH closed the hearing on HB 667.

EXECUTIVE SESSION:
BOB PERSON, distributed amendments to the committee for study. CHAIRMAN ROTH read the amendments proposed by the Sweet Grass Conservation District and also told of the amendments proposed by the DNRC. (EXHIBIT XII). MR. FRITZ commented that he didn't concur with the amended amendments submitted by the CDS, as he felt they returned the bill to its original form.

REP. CONROY moved that the committee accept the DNRC's amendments to HB 529. The motion was seconded and PASSED UNANIMOUSLY.

REP. THOFT asked what was the purpose of DNRC's amendments. MR. BERRY said the DNRC felt the water storage requirement should be made more flexible on a case-by-case basis.

RON WATERMAN, Helena attorney, stated that he appeared as a representative of a specific person, but offered his services to help find a middle ground for those of differing opinions (the Conservation Districts and the DNRC). The Conservation Districts feel that the reservations must be reduced or there should be off-stream storage so they will have more water, said Waterman. More water is reserved than actually flows, he added.

REP. ASAY moved that HB 529 DO PASS AS AMENDED. The motion was seconded and PASSED by a vote of seven to three, with the three NO votes being cast by REPRESENTATIVES HUENNEKENS, NEUMAN and KEMMIS.

HB 551.
REP. KEMMIS moved for a DO PASS AS AMENDED. The motion FAILED by a vote of 5 YES, 3 NO and 2 abstaining.

REP. CONROY MOVED that HB 551 DO NOT PASS AS AMENDED. The motion was seconded and passed by a vote of 8 YES votes and 2 NO votes, the NO votes being cast by REPRESENTATIVES KEMMIS and HUENNEKENS.

HB 670.
REP. CURTISS presented the amendments to the committee. REP. CURTISS moved the AMENDMENTS BE ACCEPTED by the committee. The motion PASSED by a vote of 9 to 1, with REP. HUENNEKENS voting NO.

REP. KEMMIS MOVED that BOB PERSON be allowed to correct minor problems in the amendments. The motion PASSED UNANIMOUSLY.

REP. CURTISS MOVED HB 670 DO PASS AS AMENDED. The MOTION FAILED by a vote of 5 to 5, with REPRESENTATIVES THOFT, ASAY, KEMMIS, NEUMAN and HUENNEKENS voting NO.

REP. KEMMIS moved to INDEFINITELY POSTPONE the bill.

REP. CURTISS made a SUBSTITUTE MOTION that HB 670 be TABLED. The motion was seconded and PASSED UNANIMOUSLY.

HB 667.
REP. CONROY MOVED that HB 667 DO PASS. The motion was seconded and PASSED UNANIMOUSLY.

The meeting was adjourned at 2:45 p.m.

Audrey Roth
AUDREY ROTH, Chairman

rj

HOUSE BILL 667

TESTIMONY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

- -

AN ACT GENERALLY REVISING AND CLARIFYING THE ADJUDICATION OF WATER RIGHTS

- -

The Department of Natural Resources and Conservation supports House Bill 667. The bill makes five changes.

1. The amendment provides for the supreme court instead of the DNRC to administer the budget of the water judges. The supreme court would supervise the water judges in the same manner it supervises the district judges.

2. The amended language clarifies the ability of the water court to appoint more than one water master per water division. Having more than one water master in each division will expedite the preparation of preliminary and final decrees. The water courts intend to utilize no more than one water master per division for the 1982-83 biennium.

3. Currently a fee of $40 is required by court order to accompany a voluntary claim made for exempted uses. The exempted uses are existing water rights for stock and domestic groundwater or instream use. The proposed amendment will ease the financial impact on the well owner having domestic and stock uses from a single well, since the cost of adjudication for that water right will generally be less than for other water rights. Under current law and court order the fee would be $80.00, $40 for each use claimed. With the proposed amendment the fee would be $40 if both claims are filed simultaneously.

4. Currently a 90 day period with a 30 day extension is provided for objections to be filed to a preliminary decree. This bill proposes to extend the intial 30 day period to 90 days since some preliminary decrees may be the size of a Sears and Roebuck catalog. This will give other water users more time to review the findings of the water court.

5. The resolution of federal and Indian reserved water rights is crucial to the successful adjudication of water rights in the state. The Reserved Water Rights Compact Commission, established by the 1979 Legislature, is working to resolve those reserved rights through negotiations with the Indian tribes and federal agencies. House Bill 667 is needed to integrate the state adjudication process and the reserved water rights negotiations to achieve a comprehensive resolution of water rights.

With these amendments the compact negotiating process would have a deadline. The tribes and federal agencies would have until July 1, 1985, to negotiate a compact with the Compact Commission. Compacts completed by that date would be included in the preliminary decree. If, however, the compacts were not negotiated and approved by July 1, 1985, then the negotiation process would be terminated. Any reserved rights left unresolved at that time would be adjudicated through the water courts.

WITNESS STATEMENT

NAME Henry Lobb BILL No. 667

ADDRESS Box 176 Helena 59604 DATE 2-18-91

WHOM DO YOU REPRESENT Chairman - Reserved Water Rights Compact Commission

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

18

WITNESS STATEMENT

NAME Gordon McGowan BILL No. 667

ADDRESS Highwood Mont 59450 DATE 2/18/81

WHOM DO YOU REPRESENT Self

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

19

NAME John P. Scully BILL No. H.B 667

ADDRESS Bozeman DATE 2/19/11

WHOM DO YOU REPRESENT Self

SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

20

NAME Paul Eaton BILL No. HB667

ADDRESS Box 853 DATE 2/19/91

WHOM DO YOU REPRESENT MFRC

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

WITNESS STATEMENT

NAME Rod Sayegusa BILL No. 667

ADDRESS Clancy, MT. DATE 2/19/81

WHOM DO YOU REPRESENT Montana Inter-Tribal Policy Board

SUPPORT _____ OPPOSE (Soft) AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

47th LEGISLATIVE SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
182	1-23-81	2-6-81	2-6-81	-----	-----	------	2-6-81	------	
232	1-23-81	2-6-81	2-6-81	----	----	------	2-6-81		
100	1-28-81	3-2-81	3-6-81	-----	-----	------	------	3-6-81	
107	1-28-81	3-2-81	2-9-81	------	------	------	2-9-81	-----	
265	1-31-81	3-4-81	2-9-81	------	------	------	------	-----	3-9-81
247	2-7-81	3-2-81	3-9-81	------	------	-------	3-9-81	------	
269	2-10-81	3-4-81	3-4-81	------	------	-------	3-4-81	-------	
324	2-13-81	3-4-81	3-4-81	-----	------	------	3-4-81	-------	
452	2-19-81	3-6-81	3-6-81	------	------	------	------	3-6-81	
488	2-19-81	3-6-81	3-18-81	-----	-----	-----	----	3-18-81	
524	2-19-81	3-6-81	3-6-81	----	----	----	------	3-6-81	
494	2-20-81	3-9-81	3-9-81	-----	-----	----	-----	3-9-81	
596	3-3-81	3-11-81	3-13-81	-----	------	----	-----	3-13-81	
667	3-3-81	3-13-81	3-13-81	-----	----	----	3-13-81	-------	
740	3-3-81	3-13-81	3-13-81	-----	-----	-----	----	3-13-81	
467	3-4-81	3-13-81	3-18-81	-----	----	----	---	3-18-81	
450	3-4-81	3-9-81	3-9-81	----	---	---	3-9-81	------	

HOUSE BILL NO. 667

INTRODUCED BY Roth Galt Ryan Hurwitz Kemmis Eudaly Conroy Bengg Schultz Ernst Ellerd Manuel

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE ADJUDICATION OF WATER RIGHTS PROVISIONS OF TITLE 3, CHAPTER 7, PART 3, AND TITLE 85, CHAPTER 2, PART 2, MCA; ALLOWING FOR THE APPOINTMENT OF MORE THAN ONE WATER MASTER IN EACH WATER DIVISION; PROVIDING FOR SUPERVISION AND ADMINISTRATION BY THE SUPREME COURT; PROVIDING A FILING FEE FOR THE FILING OF EXEMPT CLAIMS; PROVIDING THAT A PRELIMINARY DECREE MAY BE ISSUED FOR ANY INTERRELATED PORTION OF A WATER DIVISION; PROVIDING THAT A PRELIMINARY DECREE MAY BE ISSUED PENDING THE NEGOTIATION OF A COMPACT; ALLOWING A WATER JUDGE TO EXTEND THE TIME LIMIT FOR REQUESTING A HEARING ON A PRELIMINARY DECREE; PROVIDING FOR THE SUSPENSION OF LEGAL PROCEEDINGS, AND THE FILING OF FEDERAL CLAIMS UPON TERMINATION OF SUSPENSION; AMENDING SECTIONS 3-7-301, 85-2-112, 85-2-217, 85-2-225, 85-2-231, 85-2-233, 85-2-702, AND 85-2-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Supervision and administration by supreme court. (1) The Montana supreme court shall supervise the activities of the water judges, water masters, and associated personnel in implementing this chapter and Title 85, chapter 2, part 2.

(2) The supreme court shall pay the expenses of the water judges and the salaries and expenses of the water judges' staffs and the salaries and expenses of the water masters and the water masters' staffs, from the water rights adjudication account established by 85-2-241. "Salaries and expenses" as used in this section include but are not limited to the salaries and expenses of personnel, the cost of office equipment and office space, and such other necessary expenses as may be incurred in the administration of this chapter and Title 85, chapter 2, part 2.

Section 2. Section 3-7-301, MCA, is amended to read:

"3-7-301. Appointment of water masters -- removal. (1) The water judge in each water division shall appoint a at least one water master and may appoint more than one water master.

(2) A water master may be appointed after July 1, 1980, and must be appointed on or before July 1, 1982.

(3) In appointing a water master, the water judge shall consider a potential master's experience with water law, water use, and water rights.

(4) A water master shall serve at the pleasure of the

THIRD READING
HB 667

water judge and may be removed by the water judge."

Section 3. Section 85-2-112, MCA, is amended to read:

"85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted by the board under 85-2-113, subject to the powers and duties of the supreme court under [section 1];

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, declarations, claims of existing rights, and proceedings under this chapter and prescribe the information to be contained in any application, declaration, claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, declarations, claims of existing rights, applications, and other documents filed in its office under this chapter;

(4) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing declarations with the department or claims of existing rights with a district court under

this chapter."

Section 4. Section 85-2-217, MCA, is amended to read:

"85-2-217. Suspension of adjudication. ~~From the time of filing the petition required in 85-2-211 until July 1, 1983, and while~~ While negotiations for the conclusion of a compact under part 7 are being pursued, all ~~actions~~ proceedings to generally adjudicate reserved Indian water rights ~~from a source of water in question under this part~~ and federal reserved water rights of those tribes and federal agencies which are negotiating are suspended, ~~unless an action is commenced or is pending by or on behalf of an Indian tribe to adjudicate water from that source other than as provided for in Title 85, chapter 2, in such case, the suspension is maintained only if the action is dismissed or if the parties to the action stipulate to the suspension during compact negotiations of all further proceedings in the action except the determination of jurisdictional issues and an order is so issued.~~ The obligation to file water rights claims for those reserved rights is also suspended. This suspension shall be effective until July 1, 1985, as long as negotiations are continuing or ratification of a completed compact is being sought. If approval by the state legislature and tribes or federal agencies has not been accomplished by July 1, 1985, the suspension shall terminate on that date. Upon termination of the suspension of this

part. The tribes and the federal agencies shall be subject to the special filing requirements of 85-2-702(3) and all other requirements of the state water adjudication system provided for in Title 85, chapter 2. Those tribes and federal agencies that choose not to negotiate their reserved water rights shall be subject to the full operation of the state adjudication system and may not benefit from the suspension provisions of this section."

Section 5. Section 85-2-225, MCA, is amended to read:

"85-2-225. Filing fee. (1) Each claim filed under 85-2-221 or 85-2-222 ~~shall~~ must be accompanied by a filing fee in the amount of $40, subject to the following exceptions:

~~(i)~~(a) the total filing fees for all claims filed by one person in any one water court division may not exceed $480; and

~~(2)~~(b) no filing fee is required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and which is accompanied by a certified copy of that decree or pertinent portion thereof or verified as otherwise ordered by the court.

(2) A claim that is exempt from the filing requirements of 85-2-221(1) but that is voluntarily filed must be accompanied by a filing fee in the amount of $40. Exempt claims for a single development with several uses if

filed simultaneously may be accompanied by a filing fee in the amount of $40."

Section 6. Section 85-2-231, MCA, is amended to read:

"85-2-231. Preliminary decree. (1) ~~Within a reasonable time after the close of the filing period, the~~ The water judge shall issue a preliminary decree. The preliminary decree shall be based on:

(a) the statements of claim before the water judge;

(b) the data submitted by the department;

(c) the contents of compacts approved by the Montana legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

(d) any additional data obtained by the water judge. The preliminary decree shall be issued within 90 days after the close of the special filing period set out in 85-2-702(3) or as soon thereafter as is reasonably feasible. This section does not prevent the water judge from issuing an interlocutory decree or other temporary decree if such a decree is necessary for the orderly administration of water rights prior to the issuance of a preliminary decree.

(2) A preliminary decree may be issued for any hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, at

a time different from the issuance of other preliminary decrees or portions of the same decree.

~~(2)~~(3) The preliminary decree shall contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234. The water judge shall include in the preliminary decree the contents of a compact negotiated under the provisions of part 7 that has been ~~agreed--upon-by-the-parties-to-the compact~~ approved by the legislature and the tribe or federal agency whether or not it has been ratified by congress.

~~(3)~~(4) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree set forth in subsections (1) and ~~(2)~~(3), and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not so satisfied, he may, at his option, recommit the report to the master with instructions, or modify the report and issue the preliminary decree."

Section 7. Section 85-2-233, MCA, is amended to read:

"85-2-233. Hearing on preliminary decree. (1) Upon objection to the preliminary decree by the department, a person named in the preliminary decree, or any other person, for good cause shown, the department or such person is entitled to a hearing thereon before the water judge.

(2) If a hearing is requested, such request must be filed with the water judge within 90 days after notice of entry of the preliminary decree. The water judge may, for good cause shown, extend this time limit an additional ~~30~~ 90 days if application for the extension is made within 90 days after notice of entry of the preliminary decree.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions in the preliminary decree with which the department or person requesting the hearing disagrees. The request shall specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based.

(4) Upon expiration of the time for filing objections and upon timely receipt of a request for a hearing, the water judge shall notify each party named in the preliminary decree that a hearing has been requested. The water judge shall fix a day when all parties who wish to participate in future proceedings must appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing shall be conducted as for other civil actions. At the order of the water judge a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in M.R.Civ.P., Rule 53(e)."

Section 8. Section 85-2-702, MCA, is amended to read:

"85-2-702. Negotiation with Indian tribes. (1) The reserved water rights compact commission, created by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under 85-2-701. Compact proceedings shall be commenced by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written request for the initiation of negotiations under this part and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Upon receipt of such written designation from the governing body of a tribe, compact negotiations shall be considered to have commenced.

(2) When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The compact is effective and binding upon all parties upon ratification by the legislature of Montana, any affected tribal governing body, and the congress of the United States.

(3) Upon its approval by the Montana legislature and the tribe or federal agency, the terms of a compact must be

included in the preliminary decree as provided by 85-2-231. However, if approval of the state legislature and tribe or federal agency has not been accomplished by July 1, 1985, all federal and Indian claims for reserved water rights that have not been resolved by a compact must be filed with the department within 60 days. These new filings shall be used in the formulation of the preliminary decree and shall be given treatment similar to that given to all other filings."

Section 9. Section 85-2-704, MCA, is amended to read:

"85-2-704. Termination of negotiations. The commission or any other party to the negotiations may terminate negotiations by providing notice to all parties 30 days in advance of the termination date. On the termination date, the suspension of the application of part 2 provided for in 85-2-217 shall also terminate. The tribe or federal agency shall file all of its claims for reserved rights within 60 days of the termination of negotiations."

Section 10. Codification instruction. Section 1 is intended to be codified as an integral part of Title 3, chapter 7, part 2, and the provisions of section 1 apply to Title 3, chapter 7.

Section 11. Effective date. This act is effective on passage and approval.

-End-

 HB 667

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MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK AND TAXATION
MONTANA STATE SENATE

March 13, 1981

The Agriculture, Livestock and Irrigation Committee meeting was called to order on the above date by Chairman Galt, in Room 415 of the State Capitol Building at 1:00 p.m.

ROLL CALL: All members present.

CONSIDERATION OF HB 667: Representative Audrey Roth, HD 10, reviewed the bill. She said there were some minor changes and clarifications necessary since the original bill of 1979.

The Supreme Court will supervise and provide for salaries; it will allow the Court to appoint more than one water master per division; places a deadline on the period for which a settlement can be negotiated; reduces the filing fee for claims submitted for exempt developments if filed simultaneously; and clarifies existing time allowed for objections to be allowed.

She said she's discussed this with Judge Lessley, the Legislative Oversight Committee and the Reserved Rights Compact Commission and there were no objections.

Leo Berry, DNRC, said water judges were paid through the Department. This gives it to the Supreme Court. They currently charge $80, but now the entire appropriation can be $40, if filed simultaneously. They first gave a 90 day period with a 30 day extension. This now extends the 30 days to 90 because some claims are very large. HB 667 is needed to integrate appropriations. Tribe and federal agencies would have until July, 1985 to negotiate.

Charlie Crane, Water Development Association, emphasized the deadline for negotiating with Indian tribes. He said the tribes will negotiate for a long time, so he feels they need a deadline or it will never get done. If the tribes don't file by the deadline, then the courts will settle. Adjudication can't be finished until this is decided.

There were no opponents.

Representative Roth, in closing, said this expedites the mandate for SB 176.

CONSIDERATION OF HB 740: Representative Switzer, HD 54, explained it restricts the scope in which the money could be distributed. It allows that the Department of Livestock would have funds to administer the program. The Beef Council has the expertise and runs on a cheap basis. The Beef Council will distribute money after it is released from the Department of Livestock. The bill fills a gap in the industry addressed in two previous referendums. It has the acceptance of the Industry and has considerable support.

Mons Teigen, respresenting the Montana Stockgrowers Association, and President of the Montana Cowbelles, Jane Lindgren, said

funds because their industry is so small. They would have 1/2 of 1% assessment on all seed sold by them to provide funds for different purposes of research and help with the marketing process.

Representative Carl Smith, HD 57, said he had the bill in the House Agriculture Committee and heard the testimony. He has raised alfalfa seed for fifty years and supports the bill.

There were no opponents.

Senator Graham was told that four million dollars worth of seed was produced in Montana in the last three years. The tax would be about $20,000. It is 1/2 of 1% at the point of sale.

DISPOSITION OF HB 596: Senator Boylan moved to amend HB 596 to add an effective date in the title and body of the bill. Motion carried unanimously.

Senator Boylan moved HB 596, AS AMENDED, BE CONCURRED IN. Motion unanimously carried. Senator Blaylock will carry the bill on the floor.

DISPOSITION OF HB 777: Senator Kolstad moved HB 777 BE NOT CONCURRE IN.

Senator Eck felt it was a good bill and it may be put to good use.

Senator Galt questioned what would happen if, in a hundred years, there is a 100 acre plot in the middle of Billings, or what if the conservation districts went out of business.

Senator Boylan said someone would have to take care of fire districts, weeds, rodent control, etc.

Senator Kolstad reminded the Committee that this was forever. The conservation district could sell it to anyone.

Roll call vote was taken and it was 8 YES and one NO. HOUSE BILL 777 WILL RECEIVE AN ADVERSE COMMITTEE REPORT. Senator Kolstad will carry the bill on the floor.
DISPOSITION OF HB 667: Senator Graham moved HB 667 BE CONCURRED IN. Motion unanimous. Senator Galt will carry the bill on the floor.

DISPOSITION OF HB 265: Senator Lee explained the amendments to HB 265. He said there was some objection that the bill was too strict. A "buffer" zone was added so that they are not running into the center of a field.

Senator Graham thought gophers were a real problem in the western part of the state and around Livingston. He felt the Committee should have passed the bill.

Senator Boylan agreed it was a problem in isolated areas.

STANDING COMMITTEE REPORT

March 13 19 81

MR. PRESIDENT

We, your committee on AGRICULTURE, LIVESTOCK AND IRRIGATION,

having had under consideration HOUSE Bill No. 667

Roll Call)

Respectfully report as follows: That HOUSE Bill No. 667

~~DO PASS~~
BE CONCURRED IN

JACK GALT, Chairman.

STATE PUB. CO.
Helena, Mont.

ROLL CALL

AGRICULTURE COMMITTEE

47 th LEGISLATIVE SESSION - - 1981 Date 3-13-81

NAME	PRESENT	ABSENT	EXCUSED
GALT, Jack E.	✓		
KOLSTAD, Allen C.	✓		
AKLESTAD, Gary C.	✓		
OCHSNER, J. Donald	✓		
GRAHAM, Carroll	✓		
BOYLAN, Paul F.	✓		
CONOVER, Max	✓		
ECK, Dorothy	✓		
LEE, Gary	✓		

Each day attach to minutes.

SENATE AGRICULTURE COMMITTEE

House BILLS 667, 740, 467 VISITORS' REGISTER DATE 3-13-

Please note bill no

NAME	REPRESENTING	BILL #	SUPPORT	(check on) OI
ROBIN MACNAB	MONTANA LIVESTOCK MARKETS ASSOCIATION	740	✓	
"	MONTANA COUNCIL BEEF	HB740	✓	
[illegible]	Montana Cow Belles	740	✓	
Earl F. Lindgren	Montana Beef Council	740	✓	
Steve McDonnell	Mont Alfalfa Seed Assn	HB467	—	
Arthur J. Shaw	Mont Alfalfa Seed Assn	HB467	✓	
Norman A Davis	Mont Alfalfa Seed Assn	HB467	—	
[illegible]	Mont Alfalfa Seed Assn	HB467		
Lee Graham	MT Livestock Dept	HB740	✓	
Max Henthorne	Cattle Feedlot	HB740	✓	
Rep. Dean Switzer	Spencer	HB740	✓	
Mike Teigen	MT Stockgrowers	"	X	
[illegible]		467	X	
[illegible]		740	X	
JIMMIE L. WILSON	MSGA	HB740	X	
Chuck Jarecki	West. MT. Stockmen's Assn	HB740	X	
Bob Bratrud	Mont Wheat Comm	HB467	X	
David A. Mattson	MAGA			
Jo Brunner	WIFE.	667 740	—	
[illegible]	WIFE	667	—	
[illegible]	Montana Cowbelles	HB740	✓	
Donald Bragg	Rancher	HB740	—	
John Asay	MT. Cattle Feeders Assn	HB740	✓	
[illegible]	MT Cattlemen's Assn Montana Farmers Union	HB467 HB740	—	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

HOUSE BILL NO. 667

INTRODUCED BY ROTH, GALT, IVERSON, HURWITZ, KEMMIS, MOORE, CURTISS, CONROY, BRIGGS, SCHULTZ, ERNST, ELLERD, ELLISON, McLANE

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE ADJUDICATION OF WATER RIGHTS PROVISIONS OF TITLE 3, CHAPTER 7, PART 3, AND TITLE 85, CHAPTER 2, PART 2, MCA; ALLOWING FOR THE APPOINTMENT OF MORE THAN ONE WATER MASTER IN EACH WATER DIVISION; PROVIDING FOR SUPERVISION AND ADMINISTRATION BY THE SUPREME COURT; PROVIDING A FILING FEE FOR THE FILING OF EXEMPT CLAIMS; PROVIDING THAT A PRELIMINARY DECREE MAY BE ISSUED FOR ANY INTERRELATED PORTION OF A WATER DIVISION; PROVIDING THAT A PRELIMINARY DECREE MAY BE ISSUED PENDING THE NEGOTIATION OF A COMPACT; ALLOWING A WATER JUDGE TO EXTEND THE TIME LIMIT FOR REQUESTING A HEARING ON A PRELIMINARY DECREE; PROVIDING FOR THE SUSPENSION OF LEGAL PROCEEDINGS AND THE FILING OF FEDERAL CLAIMS UPON TERMINATION OF SUSPENSION; AMENDING SECTIONS 3-7-301, 85-2-112, 85-2-217, 85-2-225, 85-2-231, 85-2-233, 85-2-702, AND 85-2-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Supervision and administration by supreme court. (1) The Montana supreme court shall supervise the activities of the water judges, water masters, and associated personnel in implementing this chapter and Title 85, chapter 2, part 2.

(2) The supreme court shall pay the expenses of the water judges and the salaries and expenses of the water judges' staffs and the salaries and expenses of the water masters and the water masters' staffs, from the water rights adjudication account established by 85-2-241. "Salaries and expenses" as used in this section include but are not limited to the salaries and expenses of personnel, the cost of office equipment and office space, and such other necessary expenses as may be incurred in the administration of this chapter and Title 85, chapter 2, part 2.

Section 2. Section 3-7-301, MCA, is amended to read:

"3-7-301. Appointment of water masters -- removal. (1) The water judge in each water division shall appoint a at least one water master and may appoint more than one water master.

(2) A water master may be appointed after July 1, 1980, and must be appointed on or before July 1, 1982.

(3) In appointing a water master, the water judge shall consider a potential master's experience with water

REFERENCE BILL

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law, water use, and water rights.

(4) A water master shall serve at the pleasure of the water judge and may be removed by the water judge."

Section 3. Section 85-2-112, MCA, is amended to read:

"85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted by the board under 85-2-113; subject to the powers and duties of the supreme court under [section 1];

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, declarations, claims of existing rights, and proceedings under this chapter and prescribe the information to be contained in any application, declaration, claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, declarations, claims of existing rights, applications, and other documents filed in its office under this chapter;

(4) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to

measuring water or filing declarations with the department or claims of existing rights with a district court under this chapter."

Section 4. Section 85-2-217, MCA, is amended to read:

"85-2-217. Suspension of adjudication. ~~From--the--time of--filing--the--petition-required-in-85-2-211-until-July-1, 1982,-and-while~~ While negotiations for the conclusion of a compact under part 7 are being pursued, all ~~actions~~ proceedings to generally adjudicate reserved Indian water rights ~~from--a--source-of-water-in-question-under-this-part~~ and federal reserved water rights of those tribes and federal agencies which are negotiating are suspended, ~~unless an--action--is-commenced-or-is-pending-by-or-on-behalf-of-an Indian-tribe-to-adjudicate-water-from-that-source-other-than as-provided-for-in-Title-85,-chapter-2,-in--such--case,--the suspension--is-maintained-only-if-the-action-is-dismissed-or if-the-parties-to-the-action--stipulate--to--the--suspension during--compact--negotiations--of-all-further-proceedings-in the-action-except-the-determination-of-jurisdictional-issues and-an-order-is-so-issued.~~ The obligation to file water rights claims for those reserved rights is also suspended. This suspension shall be effective until July 1, 1985, as long as negotiations are continuing or ratification of a completed compact is being sought. If approval by the state legislature and tribes or federal agencies has not been

accomplished by July 1, 1985, the suspension shall terminate on that date. Upon termination of the suspension of this part, the tribes and the federal agencies shall be subject to the special filing requirements of 85-2-702(3) and all other requirements of the state water adjudication system provided for in Title 85, chapter 2. Those tribes and federal agencies that choose not to negotiate their reserved water rights shall be subject to the full operation of the state adjudication system and may not benefit from the suspension provisions of this section."

Section 5. Section 85-2-225, MCA, is amended to read:

"85-2-225. Filing fee. (1) Each claim filed under 85-2-221 or 85-2-222 ~~shall~~ must be accompanied by a filing fee in the amount of $40, subject to the following exceptions:

~~(1)~~(a) the total filing fees for all claims filed by one person in any one water court division may not exceed $480; and

~~(2)~~(b) no filing fee is required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and which is accompanied by a certified copy of that decree or pertinent portion thereof or verified as otherwise ordered by the court.

(2) a claim that is exempt from the filing requirements of 85-2-221(1) but that is voluntarily filed

must be accompanied by a filing fee in the amount of $40. Exempt claims for a single development with several uses if filed simultaneously may be accompanied by a filing fee in the amount of $40."

Section 6. Section 85-2-231, MCA, is amended to read:

"85-2-231. Preliminary decree. (1) ~~Within a reasonable time after the close of the filing period, the~~ The water judge shall issue a preliminary decree. The preliminary decree shall be based on:

(a) the statements of claim before the water judge;

(b) the data submitted by the department;

(c) the contents of compacts approved by the Montana legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

(d) any additional data obtained by the water judge.

The preliminary decree shall be issued within 90 days after the close of the special filing period set out in 85-2-702(3) or as soon thereafter as is reasonably feasible. This section does not prevent the water judge from issuing an interlocutory decree or other temporary decree if such a decree is necessary for the orderly administration of water rights prior to the issuance of a preliminary decree.

(2) A preliminary decree may be issued for any hydrologically interrelated portion of a water division,

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including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, at a time different from the issuance of other preliminary decrees or portions of the same decree.

~~(2)~~(3) The preliminary decree shall contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234. The water judge shall include in the preliminary decree the contents of a compact negotiated under the provisions of part 7 that has been ~~agreed--upon-by-the-parties-to-the compact~~ approved by the legislature and the tribe or federal agency whether or not it has been ratified by congress.

~~(3)~~(4) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree set forth in subsections (1) and ~~(2)~~(3), ~~and~~ is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not so satisfied, he may, at his option, recommit the report to the master with instructions, or modify the report and issue the preliminary decree."

Section 7. Section 85-2-233, MCA, is amended to read:

"85-2-233. Hearing on preliminary decree. (1) Upon objection to the preliminary decree by the department, a person named in the preliminary decree, or any other person,

for good cause shown, the department or such person is entitled to a hearing thereon before the water judge.

(2) If a hearing is requested, such request must be filed with the water judge within 90 days after notice of entry of the preliminary decree. The water judge may, for good cause shown, extend this time limit an additional ~~30~~ 90 days if application for the extension is made within 90 days after notice of entry of the preliminary decree.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions in the preliminary decree with which the department or person requesting the hearing disagrees. The request shall specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based.

(4) Upon expiration of the time for filing objections and upon timely receipt of a request for a hearing, the water judge shall notify each party named in the preliminary decree that a hearing has been requested. The water judge shall fix a day when all parties who wish to participate in future proceedings must appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing shall be conducted as for other civil actions. At the order of the water judge a hearing may be conducted by

the water master, who shall prepare a report of the hearing as provided in M.R.Civ.P., Rule 53(e)."

Section 8. Section 85-2-702, MCA, is amended to read:

"85-2-702. Negotiation with Indian tribes. (1) The reserved water rights compact commission, created by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under 85-2-701. Compact proceedings shall be commenced by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written request for the initiation of negotiations under this part and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Upon receipt of such written designation from the governing body of a tribe, compact negotiations shall be considered to have commenced.

(2) When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The compact is effective and binding upon all parties upon ratification by the legislature of Montana, any affected tribal governing body, and the congress of the United States.

(3) Upon its approval by the Montana legislature and the tribe or federal agency, the terms of a compact must be included in the preliminary decree as provided by 85-2-231. However, if approval of the state legislature and tribe or federal agency has not been accomplished by July 1, 1985, all federal and Indian claims for reserved water rights that have not been resolved by a compact must be filed with the department within 60 days. These new filings shall be used in the formulation of the preliminary decree and shall be given treatment similar to that given to all other filings."

Section 9. Section 85-2-704, MCA, is amended to read:

"85-2-704. Termination of negotiations. The commission or any other party to the negotiations may terminate negotiations by providing notice to all parties 30 days in advance of the termination date. On the termination date, the suspension of the application of part 2 provided for in 85-2-217 shall also terminate. The tribe or federal agency shall file all of its claims for reserved rights within 60 days of the termination of negotiations."

Section 10. Codification instruction. Section 1 is intended to be codified as an integral part of Title 3, chapter 7, part 2, and the provisions of section 1 apply to Title 3, chapter 7.

Section 11. Effective date. This act is effective on passage and approval.

-End-

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